

### REMARKS

The Office Action of April 10, 2006 has been carefully considered.

Claims 20-42, 45, 48 and 52 have been rejected under 35 USC 112, 2<sup>nd</sup> paragraph, and it is submitted that the terminology to which objection has been raised has been removed in the cancellation and replacement of the rejected claims.

The claims in the application have now been canceled and replaced by a new set of claims 62-99, with claims 62 and 82 being the new independent claims. These claims have been written to emphasize the relationship between the overcap and the bottle, particularly a bottle of sparkling wine sealed with a cork which protrudes from the opening in the neck of the bottle. The bottle includes a glass ring surrounding the opening, and the cork is secured to the neck with a metal tightening wire which is removable secured under the glass ring.

The skirt of the overcap includes upper and lower lines of weakness defining an opening strip and a gripping tab, the lower line of weakness dividing the cover into an upper portion and a lower portion. The lower line of weakness is located at a distance H from the top of the cover, H corresponding to the distance between the top of the cork and the bottom of the glass ring. The width L between the lines of weakness is at least  $0.5 \times H$ .

When the gripping tab is pulled, the upper portion of the cover is removed as a single piece and exposes the tightening wire and the cork to enable opening of the sealed bottle.

Claims 43-55 and 58-61 have been rejected under 35 USC 103(a) over FR2617801 in view of DE2234223 and Druesne and further in view of Babiol.

FR '801 discloses a process for fixing a metallic overcap to the neck of a bottle with a layer of adhesive over a height h1 which is below the level of the single tearing line. While this reference shows an overcap on a bottle of sparkling wine, it does not disclose the two lines of weakness or the other parameters of the present claims.

DE '223 discloses an overcap with parallel lines of weakness. The reference however is directed to a molded heat-shrinkable plastic cap provided with an opening strip formed between two weakening lines, and having a recessed top portion to center the cap on the bottle. It is clear, however, that the bottle with the overcap is not a bottle of sparkling wine with a protruding cork and wire securing the cork, and the type of overcap used, heat-shrinkable plastic, is not used for sparkling wine. Moreover, there is no teaching or suggestion of how one would apply an overcap as is shown in DE '223 to bottle with a protruding cork; the relationship between the bottle and the overcap as is presently claimed cannot be suggested by DE '223.

Dreusne et al is similarly directed to an overcap for a wine bottle, not a sparkling wine bottle with a protruding cork. The object of Dreusne et al is to produce a non-cutting tear-off line, which is a problem with the thicker overcaps used for wine bottles, as compared with sparkling wine bottles. Other than the two lines of weakness, there is nothing in the Dreusne et al reference which is relevant to the subject matter of the claimed invention, and which suggests the claimed relationship between the overcap and the bottle.

Babiol discloses an overcap for wine with two lines of weakness forming a tearable strip, and with an upper reinforcement. However, as with DE '223 and Dreusne et al, the

overcap is for a bottle of wine, not sparkling wine, and there is no disclosure or suggestion of the claimed relationships between the overcap and the bottle.

Thus, the secondary references all apply to bottle types which are different from the sparkling wine bottle which is claimed, and which includes a protruding cork secured under the glass ring of the neck with a wire. The parameters of the claimed overcap are specified such that when the gripping tab is pulled, the upper portion of the overcap is removed completely, exposing the protruding portion of the cork and the cork wire to enable the bottle to be opened. Since the secondary references do not relate to bottles for sparkling wine, they cannot and do not suggest such parameters. Thus, even assuming *arguendo* that these references do suggest using two lines of weakness on the overcap of FR '801, there is no teaching of how to determine the width of the opening strip or the relationship of the strip to the different type of bottle.

Withdrawal of this rejection is requested.

Claims 20-61 have been rejected under 35 USC 103(a) over FR '801, discussed above, in view of Ferguson, FR '796 and Dreusne et al, also discussed above.

Once again, the secondary references are all directed to overcaps for wine bottles, and not sparkling wine bottles with a protruding cork.

Ferguson discloses a method for forming an overcap with two lines of weakness, an upper reinforcement and glue on an inner surface. There is no teaching of the relationship between the overcap and the bottle with protruding cork and cork wire.

FR '796 is directed to a portion of heat-shrinkable adhesive tape used to surround the neck of a bottle closed with a closure having a head 12. The reference discloses a

specific oriented (drawn) adhesive plastic tape, a portion of which having a tearing strip 22 can be applied around a neck closed with a closure having a head, and then heat-shrunk onto the neck of the bottle. To free the closure, the strip 22 tears along lines 23, 24 upon pulling. However, the teaching of FR '796 is not applicable to bottles for sparkling wine, and does not suggest the claimed parameters for an overcap.

Dreusne et al is similarly directed to an overcap for a wine bottle, not a sparkling wine bottle with a protruding cork. Other than the two lines of weakness, there is nothing in the Dreusne et al reference which is relevant to the subject matter of the claimed invention, and which suggests the claimed relationship between the overcap and the bottle.

As the secondary references do not disclose or suggest how to adapt the cover for a sparkling wine bottle as shown in FR '801, withdrawal of this rejection is requested.

Finally, Applicants have previously submitted a Rule 132 Declaration explicitly demonstrating the commercial success of Applicant's Easy-to-Open cover (hereafter "EOC"). The Office Action alleges that the declaration refers only to the system described in the present application, and not to the individual claims of the application, and hence the objective evidence of non-obviousness presented in the declaration is not commensurate in scope with the claims.

Applicants therefore submit herewith a supplemental Declaration under 37 CFR 1.132 in which Jacques Granger states explicitly that the commercially successful article is fully commensurate in scope with the invention as recited in new claims 62 and 82 (appended to the declaration), particularly regarding the location of the lower line of weakness, the height H and the relationship between L and H.

Given the further evidence now presented, Applicants

submit that the evidence of commercial success is sufficient to rebut any presumption of *prima facie* obviousness created by the cited references.

In view of the foregoing amendments and remarks, Applicants submit that the present application is now in condition for allowance. An early allowance of the application with amended claims is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ira J. Schultz". The signature is written in a cursive, slightly stylized font.

Ira J. Schultz  
Registration No. 28666  
(703)837-9600, ext. 23